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EXAMINER

QIN, JIANCHUN

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/568,358	<b>Applicant(s)</b> ASPLAND, MARK	
	<b>Examiner</b> JIANCHUN QIN	<b>Art Unit</b> 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 2/13/06&4/27/06.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 23-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/13/06</u>   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 23-43 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

In claims 23, 28 and 36, the phrases "able to" render the claims indefinite because it is unclear whether the limitations following the phrases are part of the claimed invention. See MPEP § 2173.05(d).

Claims 24-27, 29-35 and 37-43 are rejected based on dependency.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 23, 24, 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Brando (U. S. Pub. No. 20020184992).

Regarding claim 23, Brando discloses a drum (Abstract, Fig. 2) comprising: a resonant chamber (Fig. 2, the hollow interior enclosed by shell 16) having an external surface (the drumhead 18) capable of being struck by a player of said drum, said

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external surface being able to produce a range of sounds (sections 0010 and 0039); and, means for altering said range of sounds produced by the player when striking said external surface (Figs. 2 and 14; sections 0010, 0033, 0037, 0039 and 0068).

Regarding claim 24, Brando discloses a drum, wherein said external surface of said resonant chamber is sufficiently thin for causing said external surface to vibrate when struck by the player (section 0010).

Regarding claim 26, Brando discloses a drum, wherein said resonant chamber has a surface opposite said external surface that has an aperture therethrough (Fig. 2).

Regarding claim 27, Brando discloses a drum, further comprising a tunable extension passing through the aperture in said surface opposite said external surface for altering frequency of said range of sounds produced by the player when striking said external surface (Figs. 2 and 14; sections 0010, 0033, 0037, 0039 and 0068).

5. Claims 23, 28-31, 34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Lewan (U. S. Pat. No. 2604001).

Regarding claim 23, Lewan discloses a drum (Abstract, Figs. 1-3) comprising: a resonant chamber (10) having an external surface (the drumhead 12) capable of being struck by a player of said drum, said external surface being able to produce a range of sounds (col. 3, lines 3-30); and, means for altering said range of sounds produced by the player when striking said external surface (col. 3, lines 3-30).

Regarding claim 28, Lewan discloses a drum, wherein said means for altering said range of sounds produced by the player when striking said external surface includes a plurality of internal snares (16) able to be brought into contact with an internal

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surface of said external surface (col. 1, lines 30-35), thereby altering said range of sounds (col. 3, lines 3-30).

Regarding claim 29, Lewan discloses a drum, wherein said plurality of internal snares (16) comprise a plurality of thin elongated members lying substantially parallel to, and having spacing between (Figs. 1-4), one another and abutting, or adjacent with, said internal surface (col. 1, lines 30-35; col. 2, lines 47-51).

Regarding claim 30, Lewan discloses a drum, wherein said plurality of internal snares are flexible (col. 2, lines 25-30).

Regarding claim 31, Lewan discloses a drum, further comprising means for moving said plurality of internal snares away from said internal surface (by either changing the orientation of elements 17 or displacing the snares 16, see col. 3, lines 3-12 and 24-30).

Regarding claim 34, Lewan discloses a drum, wherein said plurality of internal snares are wires (col. 2, lines 25-34).

Regarding claim 35, Lewan discloses a drum, wherein said plurality of internal snares extend between two sides of said internal surface (Figs. 1 and 2).

6. Claims 23, 28-31, 34, 35, 39, 41 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Hagiwara (U. S. Pub. No. 20020092406).

Regarding claim 23, Hagiwara discloses a drum (Figs. 1-4) comprising: a resonant chamber (interior of body 1) having an external surface (the drumhead 2) capable of being struck by a player of said drum, said external surface being able to produce a range of sounds (sections 0023 and 0024); and, means for altering said

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range of sounds produced by the player when striking said external surface (sections 0023 and 0024).

Regarding claim 28, Hagiwara discloses the drum, wherein said means for altering said range of sounds produced by the player when striking said external surface includes a plurality of internal snares (24) able to be brought into contact with an internal surface of said external surface (Figs. 3 and 4), thereby altering said range of sounds (section 0024).

Regarding claim 29, Hagiwara discloses the drum, wherein said plurality of internal snares (24) comprise a plurality of thin elongated members lying substantially parallel to, and having spacing between (Fig. 3), one another and abutting, or adjacent with, said internal surface (section 0023).

Regarding claim 30, Hagiwara discloses the drum, wherein said plurality of internal snares are flexible (col. 2, lines 25-30).

Regarding claim 31, Hagiwara discloses the drum, further comprising means for moving said plurality of internal snares away from said internal surface (Figs. 3 and 4; section 0023).

Regarding claim 34, Hagiwara discloses the drum, wherein said plurality of internal snares are wires (section 0021).

Regarding claim 35, Hagiwara discloses the drum, wherein said plurality of internal snares extend between two sides of said internal surface (Fig. 3).

Regarding claim 39 and 41, Hagiwara discloses the drum, further comprising: a sound effects board (the acoustic wire assembly) for producing a sound otherwise

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produced by an instrument separate from said drum (section 0021); and, means for attaching said sound effects board to said drum (Figs. 3 and 4); wherein said sound effects board includes a plurality of snares (24) attached to a back side thereof (Fig. 4).

Regarding claims 39 and 42, Hagiwara discloses the drum, further comprising: a second sound effects board (portion of the circumferential wall of the trunk main body 1 where the jingles 5 are mounted) for producing a sound otherwise produced by an instrument separate from said drum (Abstract; section 0017); and, means for attaching said second sound effects board to said drum (section 0015); where said second sound effects board includes a plurality of tambourine jingles (5) attached to a back side thereof.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brando, as applied above to claim 23, in view of Migirian (U.S. Pat. No. 4026185).

Regarding claim 25, Brando discloses the drum including the subject matter discussed above. Brando does not mention explicitly: wherein said drum has six sides with each side of said six sides being rectangular in shape.

Migirian discloses a musical drum, wherein said drum has six sides with each side of said six sides being rectangular in shape (Figs. 1-3).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the drum of Brando as taught by Migirian to have six sides with each side of said six sides being rectangular in shape in order to provide a large drum like the one of the Migirian invention which is of the bass type (Migirian, col. 1, lines 5-8; Brando, section 0035).

9. Claims 40 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hagiwara, as applied above to claims 23 and 39, in view of Shelley (U.S. Pat. No. 6172289).

Regarding claims 40 and 43, Hagiwara discloses the drum including the subject matter discussed above. Hagiwara does not mention explicitly: wherein said means for attaching said sound effects board to said drum includes means for attaching said sound effects board to said external surface of said resonant chamber; wherein said sound effects board is fitted via said means for attaching said sound effects board to said drum adjacent a corner of said external surface of said resonant chamber and is shaped as a segment of a circle and of a size that does not obstruct striking of said external surface.

Shelley discloses a musical drum, comprising: a resonant chamber (inherent to the drum of Shelley); an external surface (outer surface of drumhead 10) of said resonant chamber; a sound effects board (40) for producing a sound otherwise produced by an instrument separate from said drum (col. 4, lines 25-29); and, means for



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attaching said sound effects board to said drum (Figs. 2 and 3); wherein said means for attaching said sound effects board to said drum includes means for attaching said sound effects board to said external surface of said resonant chamber (Fig. 2); wherein said sound effects board (40) is fitted via said means for attaching said sound effects board to said drum adjacent a corner of said external surface of said resonant chamber and is shaped as a segment of a circle and of a size that does not obstruct striking of said external surface (Fig. 1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the drum of Hagiwara as taught by Shelley to mount the sound effect board to the external surface in order to produce a plurality of sounds upon striking the drum head of a drum (Shelley, col. 1, lines 53-58).

### ***Allowable Subject Matter***

10. Claims 32, 33 and 36-38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and to overcome the rejection set forth in sections 1 and 2 above in this Office Action.

### ***Reasons for Allowance***

11. The following is an examiner's statement of reasons for allowance:

The primary reason for the allowance of claims 32 and 33 is the inclusion of the limitation that said means for moving said plurality of internal snares away from said

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internal surface includes a member passing beneath said plurality of internal snares, along a length thereof and movable between a first position and a second position, wherein said plurality of internal snares about said internal surface in said first position and, in said second position, said plurality of internal snares are displaced from said internal surface. It is this limitation found each of in the claims, as it is claimed in the combination that has not been found, taught or suggested by the prior art of record, which makes these claims allowable over the prior art.

The primary reason for the allowance of claims 36-38 is the inclusion of the limitation of a bass drum stick within said resonant chamber, said bass drum stick having a handle and a head with an end of said handle positioned distal from said head being mounted for partial rotation, so that said head is able to be selectively brought into contact with an inner surface of said resonant chamber in a striking manner. It is this limitation found each of in the claims, as it is claimed in the combination that has not been found, taught or suggested by the prior art of record, which makes these claims allowable over the prior art.

### ***Contact Information***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jianchun Qin whose telephone number is (571) 272-5981. The examiner can normally be reached on 8am - 5:30pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Benson can be reached on (571) 272-2227.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jianchun Qin/

Examiner, Art Unit 2837